the Muhammadan law governs the distribution of non-customary land.

The parties appeared in person. The words "Customary Land" were not recorded on the entry in the mukim register which referred to the land of the deceased and the land had never been held under old title and confined to any particular tribe subject to the adat.

PEDLOW, J.—This is an appeal against the decision of the Collector at Rembau as to the distribution under Chapter XIX of the Probate and Administration Enactment of the estate of Imah binti Datoh Mentri Jahia, of Chengkau.

The estate consisted of one piece of land only, viz., that comprised in E.M.R. 323, lot No. 872, Chengkau.

The deceased left two sons, one daughter, a husband and a mother. The latter renounced her rights in favour of the children.

The land was not customary land within the meaning of the Customary Tenure Enactment.

The Collector made an order for distribution giving the husband a share in the estate in accordance with the *Hukum Shara* or Muhammadan Law following section 184 (iii) of the Probate and Administration Enactment which states that the Collector shall "distribute the estate according to the law or custom having the force of law applicable to the deceased."

Against this decision the daughter Indun appealed on two grounds, viz.:

(1) that the value of the land was over $3,000 and therefore the Collector had no jurisdiction;

(2) that the parties were Rembau Malays of the Tanah Datar tribe, the land was in Rembau in the Tampin district and was *harta dapatan* (property acquired by the wife before her marriage) and therefore the husband was not entitled to any share.

A valuation of the land by the Collector at my request showed that it was worth $2,590 at date of distribution. Therefore ground (1) failed.

As to the second ground, it was argued that there can be three types of land, viz., customary, non-customary and (say) Rembau land.

I am unable to accept this proposition. The intention of the legislature in passing the Customary Tenure Enactment, as amended to date, seems to be that land shall be either customary or non-customary. In this connection see the definitions of "custom" and "customary land" in section 2 of that Enactment. The only land which can now descend according to "custom" is "customary land."

If the land is non-customary, as this is, I agree with Mudie, J., in *Kutai bin Haji Lateh and others* v. *Taensah binti Haji Enoh*, 3 M.L.J. 251 that in the case of Muhammadans, the *Hukum Shara* or Muhammadan Law governs the distribution.

The appeal therefore fails and the Collector's decision is confirmed. I make no order as to costs.

Appeal dismissed.

No order as to costs.

[APPELLATE CIVIL JURISDICTION]

PEDLOW, J.

October 27, 1937.

NG CHIN SIU.....Plaintiff

vs.

1. N.P.L.S.T. MUTHIAH CHETTY

2. AROKIAMARIAMMAL (f).....Defendants

[NEGRI SEMBILAN CIVIL SUIT No. 27 of 1937]

Interest of registered proprietor of land—Sale of land—Section 55 Land Code (Cap. 138)—Attachment before judgment.

The second defendant being the registered proprietor of an undivided half share in a piece of land executed a charge thereover. When the suit was instituted the first defendant and another were the registered chargees.

Default in payment having occurred the chargees obtained an order for sale of the land which was fixed for the 17th April, 1937.

On 28th March, 1937, the plaintiff entered into an agreement with the second defendant to purchase her share in the land.

On 30th March, 1937, the plaintiff executed a caveat prohibiting all dealings with the second defendant's share in the land.

On 31st March, 1937, the purchase price having been paid in full a transfer of the second defendant's share in the said land was executed in favour of the plaintiff's nominee and the caveat was registered.

On the 1st April, 1937, the second defendant paid into Court the amount mentioned as the reserve price to stop the sale.

On the 13th April, 1937, a discharge of the charge was executed.

Meanwhile the first defendant had instituted a suit against the second defendant to recover damages in place of interest unpaid on the charge and on the 3rd April 1937. he caused to be registered in the Land Office an attachment before judgment of the second defendant's share in the land.

The attachment before judgment was obtained *ex parte* and without notice to the second defendant.

Held: The fact that, at the time of the attachment, the second defendant no longer had any disposing power over the land does not prevent the land from being attached.

A caveat under the Land Code only affects the registered proprietor and is no bar to a judgment creditor.

An attachment before judgment obtained *ex parte* and without notice to the registered proprietor is bad and must be set aside.

F. A. Wright for plaintiff.

E. Jeff and *Ramani* for first defendant.

T. T. Bok for second defendant.

PEDLOW, J.—This is a suit to set aside an attachment of land before judgment alleged to have been wrongfully made, and for consequential relief and damages.

The 2nd defendant on 28th March, 1929, executed a charge over her undivided half interest in land held under Negri Sembilan grant for land No. 8828 for lot No. 257, Tampin, in favour of S.RM.RM. S. Supramaniam Chettiar.

The 1st defendant and one Goh Eng Thye were the registered chargees of the said charge when this suit was filed.

In Originating Summons No. 142 of 1934 these two chargees, default in payment having been made by the 2nd defendant, obtained an order of Court on 6th February, 1937, to sell the land at the reserve price of $34,000 as determined under the provisions of the Land Code. The sale, after one postponement, was fixed for 17th April, 1937.

On 28th March, 1937, the plaintiff entered into an agreement with 2nd defendant to purchase her share in the said land for $45,000/–.

On 30th March, 1937, the plaintiff executed a caveat against all dealings in the said land.

On 31st March, 1937, the balance of the purchase money was paid in full and a transfer of the said land was executed in favour of plaintiff's nominee. Also the caveat was registered.

On the 1st April, 1937, 2nd defendant paid $34,000 and costs into Court to stop the sale of land under the charge.

On 13th April, 1937, a discharge of the charge was executed.

Meantime in Civil Suit No. 13 of 1937 the 1st defendant had instituted a suit to recover damages in place of interest unpaid on the charge after due date and on 3rd April, 1937, he caused to be registered in the Land Office at Seremban in respect of that suit an attachment before judgment of 2nd defendant's share in the said land.

This attachment prevented the registration of the plaintiff as the proprietor of the land.

The attachment before judgment is alleged to be bad in law on two grounds, viz.:—

(1) that at the time thereof the 2nd defendant had no longer any disposing power over the said land; and

(2) that the attachment was obtained *ex parte* and without notice to 2nd defendant.

I am unable to accept the fiirst ground because when the attachment was effected the 2nd defendant was the registered proprietor of the land and under the system of land registration embodied in the Land Code it was clearly competent for the 1st defendant to attach the land registered in 2nd defendant's name. To hold otherwise would be to ignore the obvious intention of the the Land Code.

The plaintiff at that time had merely certain rights in contract against the 2nd defendant and it would be very unwise, even if it were possible, for this Court to attempt to enforce those rights in contract by means of equitable remedies to the detriment of the system of Land Tenure by law established. Section 55 of the Land Code seems final on this point.

The argument that plaintiff's position was strengthened by the existence of a registered caveat is misconceived because a caveat by its very terms under section 166 of the Land Code only affects the registered proprietor and is no bar to a judgment creditor.

As to the second ground it is admitted that the attachment before judgment was obtained *ex parte* and without notice to 2nd defendant. It did not comply with the provisions of the Civil Procedure Code and the Registrar should never have made the order he did dated 3rd April, 1937—exhibit "NCS 4" attached to the plaint. What took place was an illegality, not an irregularity, an express disobedience of the plain language of the Code.

I hold the attachment, therefore, to be bad in law, and as such it should be set aside.

I give judgment for the plaintiff in the terms of prayers I and 2 of paragraph 19 of the plaint with costs against the 1st defendant.

I award no damages to the plaintiff as the wrongful attachment had been issued by the Court, and plaintiff's proper and less expensive remedy would have been to have applied by motion to set aside the *ex parte* attachment. But before making my order final on this point I am prepared to hear argument if application is made by any party within one week. If not this portion of my judgment stands. I award the 2nd defendant her costs against the 1st defendant as the whole trouble has arisen from the 1st defendant's overhasty and illconceived action.

Finally I rescind and cancel the order I made on the 14th instant prohibiting all further dealings with the land in dispute without an order from this Court.

Judgment for plaintiff and other orders accordingly.